

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DAVID ANDRANGO,	:	
	:	
Petitioner,	:	14-CV-7716 (JPO)
	:	
-v-	:	
	:	<u>OPINION AND ORDER</u>
PAUL CHAPPIUS, JR.,	:	<u>ADOPTING REPORT</u>
	:	<u>AND</u>
Respondent.	:	<u>RECOMMENDATION</u>
	:	
-----X	:	

J. PAUL OETKEN, District Judge:

Petitioner David Andrango was convicted in New York Supreme Court, New York County, on April 12, 2010, of murder and robbery, both in the first degree. He was sentenced to twenty-five years' to life imprisonment for the murder conviction, and a concurrent term of twenty-five years' imprisonment for the robbery charge. Following a direct appeal, the New York Supreme Court, Appellate Division, First Department, affirmed Andrango's conviction on May 9, 2013. *People v. Andrango*, 106 A.D.3d 461 (N.Y. App. Div. 1st Dep't 2013). On August 5, 2013, the New York Court of Appeals denied leave to appeal. 21 N.Y.3d 1040 (2013).

On September 23, 2014, Andrango, proceeding *pro se*, filed a timely petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his conviction and sentence under the Fifth and Eighth Amendments of the United States Constitution. (Dkt. No. 1.) The Court referred the case to Magistrate Judge Sarah Netburn, who issued a Report and Recommendation, recommending that Andrango's habeas petition be denied. (Dkt. 15.) Andrango has not filed any objections to the Report and Recommendation, and the time to do so has expired.

When reviewing a report and recommendation by a magistrate judge, a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). The Court reviews a report and recommendation for

clear error where, as here, no objection has been made. *McDonagh v. Astrue*, 672 F. Supp. 2d 542, 547 (S.D.N.Y. 2009) (citation omitted). Having reviewed Judge Netburn's thorough and well-reasoned Report and Recommendation, the Court concludes that it is without error.

Accordingly, the Report and Recommendation (Docket No. 15) is hereby ADOPTED in full, and the petition for habeas corpus is DENIED.

As Petitioner has not made a substantial showing of the denial of a constitutional right, no certificate of appealability will be issued. *See* 28 U.S.C. § 2253(c)(2).

The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from its order would not be taken in good faith, and, therefore, *in forma pauperis* status is denied for the purposes of an appeal.

The Clerk of Court is directed to enter judgment in Respondent's favor dismissing the case.

SO ORDERED:

Dated: July 1, 2015
New York, New York



J. PAUL OETKEN
United States District Judge

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